



**Before The
State Of Wisconsin
DIVISION OF HEARINGS AND APPEALS**

In the Matter of Claims Against the Dealer Bond
of Smart Auto Center

Case Nos.: TR-00-0016 & TR-00-0018

ORDER DENYING PETITION FOR REHEARING

A Final Decision in the above-captioned matter was issued on November 14, 2000. On December 4, 2000, Carl Schwibinger filed a Petition for Rehearing in this matter. On December 14, 2000, Attorney John Laun filed a response to the Petition for Rehearing on behalf of the claimant, Thomas Haendel. Pursuant to sec. 227.49(3) a rehearing may only be granted on the basis of:

- a. Some material error of law;
- b. Some material error of fact;
- c. The discovery of new evidence sufficiently strong to reverse or modify the order, and which could not have previously been discovered by diligence.

In his Petition for Rehearing, Mr. Schwibinger states three reasons as the basis for his request. Presumably he is arguing that these "reasons" constitute errors of fact in the Final Decision. However, his "reasons" are contrary to the evidence in the record and Mr. Schwibinger does not offer any evidence to support his allegations. The first reason cited by Mr. Schwibinger is that "the offer to purchase was not accepted within two hours. This made the offer void. The vehicle was not sold during this time as set forth in Trans 139.05(1)." Presumably, Mr. Schwibinger is arguing that Smart Auto Center did not accept Mr. Haendel's offer to purchase within the required two hours. However, the copy of the purchase contract which was admitted as an exhibit in this matter (Ex. 7) is signed by the salesperson indicating the dealer's acceptance of the offer. According to the purchase contract, the acceptance occurred on November 18, 1999, at 7:00 p.m., the same time as Mr. Haendel executed the purchase contract. Mr. Schwibinger has not offered any evidence indicating that this acceptance is invalid.

The second reason in Mr. Schwibinger's Petition for Rehearing is Mr. Haendel's "failure to cooperate in the investigation of the claimant[']s claim. After several requests no MV-11 was provided. An actual value of the vehicle Mr. Haendel purchased cannot be determined without a mileage statement. Failure to provide this information clearly is a violation of this Trans. I ask that this claim be denied." Section Trans 140.21(3)(d), Wis. Admin. Code does provide that the

Department of Transportation may disallow a claim in the event of the "failure of the claimant to cooperate in the investigation of the claimant's claim, including failure to provide additional support and documentation or evidence for a claim or to provide other explanatory materials when that information is requested by the [D]epartment [of Transportation] and is readily available to, or known to, the claimant or is in the claimant's possession or control." There is also no evidence in the record that the Department requested Mr. Haendel provide them a copy of the MV-11 for the vehicle he subsequently purchased. Even if such a request was made, there is no evidence Mr. Haendel failed to cooperate with the Department.

Finally, Mr. Schwibinger alleges that Mr. Haendel falsely misrepresented the condition of the salter and plow on his trade-in vehicle. Again, there is no evidence in the record to support Mr. Schwibinger's allegation, nor has he submitted any additional evidence to support them. The allegations made by Mr. Schwibinger are not supported by the evidence in the record. Additionally, even if Mr. Schwibinger had evidence to support his allegations, he has not shown any reason why this evidence could not have been presented at the hearing in this matter. The request for rehearing is denied.

Dated at Madison, Wisconsin on December 22, 2000.

STATE OF WISCONSIN
DIVISION OF HEARINGS AND APPEALS
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By: _____

MARK J. KAISER
ADMINISTRATIVE LAW JUDGE

NOTICE

Set out below is the method available to persons who may wish to obtain review of the attached decision of the Division. This notice is provided to insure compliance with sec. 227.48, Stats., and sets out the rights of any party to this proceeding to petition for rehearing and administrative or judicial review of an adverse decision.

Any person aggrieved by the attached decision which adversely affects the substantial interests of such person by action or inaction, affirmative or negative in form is entitled to judicial review by filing a petition therefore in accordance with the provisions of secs. 227.52 and 227.53, Stats. Said petition must be filed within thirty (30) days after service of the order disposing of the rehearing application or within thirty (30) days after final disposition by operation of law. Any petition for judicial review shall name the Division of Hearings and Appeals as the respondent. Persons desiring to file for judicial review are advised to closely examine all provisions of secs. 227.52 and 227.53, Stats., to insure strict compliance with all its requirements.